No. 94-1853

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

Supreme Court, U.S.
FILED
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PAUL DAVID FINI CASTRIOTTA,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Nevada

REPLY BRIEF OF PETITIONER

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Dated: August 30, 1994

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REPLY BRIEF OF PETITIONER

INTRODUCTION

The petition for writ of *certiorari* was prepared by petitioner *pro se*. After the petition was filed and the State filed a response, petitioner sought to retain the undersigned counsel of record, who agreed to prepare this reply brief *pro bono publico* because this case meets the traditional criteria for a writ of *certiorari* and the facts reveal a miscarriage of justice.

Respondent does not dispute the material facts set forth in the petition. Those undisputed facts present at least two important issues of federal law on which the lower courts are divided: (1) Is one State's determination in an extradition proceeding that a person is not a fugitive from justice entitled to full faith and credit in a subsequent extradition proceeding brought in another State?, and (2) Does the alleged fugitive have the right to present evidence at an extradition hearing that he was not in the demanding State at the time of the alleged

offense? The opinion below not only deepened the split of authority on these two questions, but incorrectly and unfairly answered both questions against petitioner.

I. THE NEVADA SUPREME COURT ERRED BY REFUSING TO GIVE FULL FAITH AND CREDIT TO THE FLORIDA JUDGMENT THAT PETITIONER WAS NOT A FUGITIVE FROM JUSTICE, EXACERBATING A SPLIT IN AUTHORITY IN THE LOWER COURTS.

After a full evidentiary hearing, a Florida trial court determined that petitioner was not a fugitive from justice, based on evidence presented by petitioner that he was not in Arizona on the dates of the offenses alleged in the underlying indictments. (Reply Br. App. 1a-2a). Under Florida law, that determination is entitled to (and was given in this case) res judicata effect.

As explained in the petition for *certiorari*, the full faith and credit analysis in this case is straightforward. Nevada must afford the Florida judgment at least the same res judicata effect to which it would be entitled in Florida. *See, e.g.*, 28 U.S.C. § 1738 (1988); *Durfee v. Duke*, 375 U.S. 106, 109 (1963). Florida law gives res judicata effect to a judgment in an extradition proceeding finding that a particular person is not a fugitive from justice. *See, e.g., Stack v. State*, 333 So.2d 509 (Fla. App. 1976); *Crane v. Hayes*, 253 So.2d 435 (Fla. 1971). Therefore, Nevada was constitutionally required to give full faith and credit to the prior Florida judgment finding that petitioner could not be extradited to Arizona because he was not a fugitive—just as the Florida courts had previously dismissed Arizona's successive extradition attempts in Florida based on the same warrants.

Respondent does not, and cannot, contest the proposition that the Florida courts would deny Arizona's current extradition request as res judicata. Rather, respondent simply reiterates the novel theory that it successfully advanced below: that judgments in extradition proceedings, as a class,

are *per se* not entitled to res judicata effect or, consequently, full faith and credit. *See* Opp. Br. at 6 ("In its opinion, the Nevada Supreme Court held that extradition proceedings are not entitled to res judicata effect.") (citing *Castriotta*, 888 P.2d at 928). According to respondent and the Nevada Supreme Court, Florida law is *irrelevant* in determining the preclusive effect in Nevada of the prior Florida extradition proceedings: indeed, neither respondent nor the court below made even cursory reference to Florida law. Ordinary full faith and credit principles, under Nevada's view, are trumped by a substantive federal common-law rule that extradition proceedings cannot operate as res judicata.

That theory has no basis in principle or this Court's precedents. Respondent purports to base it on this Court's decision in *Collins v. Loisel*, 262 U.S. 426 (1923). That case, however, established nothing remotely of the kind—it simply held that an international extradition proceeding was not barred by an earlier such proceeding dismissed because of procedural irregularities. 262 U.S. at 430. The point of *Loisel* is not that, as a matter of federal common law, extradition proceedings *per se* cannot operate as res judicata, but simply that a federal extradition proceeding dismissed on a technicality will not bar a subsequent federal extradition proceeding on the merits. *Loisel* certainly does not stand for the proposition that *States* cannot apply ordinary rules of res judicata to their own interstate extradition proceedings or that other States are free to deny such proceedings full faith and credit.[1] Indeed, if anything, *Loisel* stands for the proposition that federal

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[1] Thus, respondents' reliance on *Hooker v. Klein*, 573 F.2d 1360 (9th Cir.), *cert. denied*, 439 U.S. 932 (1978), is also misplaced. There, as in *Loisel*, the question was whether—as a matter of *federal* law—an initial international extradition proceeding was entitled to res judicata effect in a subsequent international extradition proceeding. *Hooker* in no way suggests that *States* may not determine the res judicata effect of their own extradition proceedings, or that the ordinary principles of full faith and credit do not apply in the *interstate* extradition context.

extradition proceedings *do* have res judicata effect with respect to "the issues of law and fact necessarily involved in that result." 262 U.S. at 430 & n.2. *See also Chambers v. Cox*, 400 U.S. 870, 871 (1970) (Brennan, J., dissenting from denial of *certiorari*).

The Nevada Supreme Court's refusal to afford full faith and credit to the Florida judgment that petitioner is not a fugitive from Arizona is not only wrong, but exacerbates a split among the lower courts over the applicability of the ordinary rules of res judicata and full faith and credit in interstate extradition cases. Some States, like Nevada, have held that a judgment discharging a prisoner in an initial extradition proceeding is not entitled to res judicata or full faith and credit in a subsequent extradition proceeding *regardless* of the ordinary res judicata rules of the first jurisdiction. *See, e.g., In re Moskaluk*, 591 A.2d 95, 97 (Vt. 1991); *In re Russell*, 524 P.2d 1295, 1298 (Cal. 1974); *Letwick v. State*, 198 S.W.2d 830, 830-31 (Ark. 1947).

Other courts, in contrast, have recognized that a judgment granting habeas corpus relief in an initial extradition proceeding *is* entitled to res judicata effect and full faith and credit in subsequent extradition proceedings, at least where (as here) the initial proceeding was on the merits and the subsequent proceeding is based on the same evidence. That is the law in Florida, as noted above, and it is Florida law that should have governed here. *See also, e.g., People v. Coyle*, 654 P.2d 815, 817-18 (Colo. 1982); *Cain v. Moore*, 438 A.2d 723, 725 (Conn. 1980), *cert. denied.*, 454 U.S. 844 (1981); *id.*, at 725-26 (Cotter, C.J., concurring, joined by a majority of the Court); *Wells v. Sheriff, Carter County*, 442 P.2d 535, 540 (Okla. Crim. App. 1968); *People ex rel. Ritholz v. Sain*, 187 N.E.2d 241 (Ill. 1962); *Seigler v. Canterbury*, 318 P.2d 219, 220-21 (Colo. 1957); *People ex rel. Chakouian v. Hoy*, 183 N.Y.S.2d 980, 982 (Sup.Ct. 1959); *Ex parte Messina*, 128 S.W.2d 1082, 1085 (Mo. App. 1939). In some of these cases, res judicata was held to bar the subsequent extradition

proceeding; in others, it was not, because the prior proceeding involved different evidence or allegations or had been denied because of a procedural deficiency. All these cases, however, accept the application of res judicata and/or full faith and credit in the interstate extradition context—precisely the approach rejected below.

This difference of opinion has not gone unnoticed by commentators. "Where a second extradition proceeding is brought in a different state from an earlier proceeding in which the prisoner had been discharged upon habeas corpus, *there is a difference of opinion between the jurisdictions as to the effect of the earlier discharge*." Anita R. Shapiro, Annotation, Discharge on Habeas Corpus of One Held In Extradition Proceedings as Precluding Subsequent Extradition Proceedings, 33 A.L.R.3d 1443, 1444-45 (1970) (emphasis added). Indeed, respondent candidly acknowledged this split in authority below. *See* Resp. Br. in Nev. S.Ct. at 2 ("[T]here is no definitive authority on whether or not discharge on habeas corpus of one held for extradition bars subsequent extradition proceedings. Instead, *research shows that there is a clear split among courts*.") (emphasis added); *id.* at 11 (noting "*split of authority* whether a subsequent [extradition] proceeding is barred because an earlier one was discharged on habeas corpus") (emphasis added).

By applying a bright-line rule that extradition proceedings *per se* are not entitled to full faith and credit, the Nevada Supreme Court not only deepened that split in authority, but essentially brought the Extradition and Full Faith and Credit Clauses of the U.S. Constitution into direct conflict. It is far from self-evident, as the opinion below implicitly held, that the command of the Extradition Clause invariably trumps the command of the Full Faith and Credit Clause. Those two clauses are neighbors in Art. IV, and embody the same basic command that one State must respect (and aid) the judicial process of another State. Just as an asylum State must give full faith and credit to a demanding State's charging documents, a

demanding State must give full faith and credit to an asylum State's judicial determination that one is not a fugitive from justice. This Court has not previously addressed how these two companion clauses interrelate, and this case presents a good vehicle for doing so.

II. THE NEVADA SUPREME COURT ERRED IN HOLDING THAT PETITIONER WAS NOT ENTITLED TO PRESENT EVIDENCE THAT HE WAS NOT IN ARIZONA AT THE TIME OF THE ALLEGED CRIMES, EXACERBATING A SPLIT OF AUTHORITY IN THE LOWER COURTS.

The Nevada Supreme Court also incorrectly held that, in extradition proceedings, the courts of the asylum State may not consider evidence that the defendant was not in the demanding State at the time of the alleged crimes. That erroneous decision deepens a pre-existing split in the courts over whether this Court's decision in *Michigan v. Doran*, 439 U.S. 282 (1978), precludes the consideration of such evidence by the courts of the asylum State.

In a line of cases stretching back well into the nineteenth century, this Court has held that a person challenging an interstate extradition request has a federal constitutional right to present a court in the asylum state with evidence that he is not a "fugitive from justice." *See, e.g.*, *Doran*, 439 U.S. at 289; *South Carolina v. Bailey*, 289 U.S. 412, 419-22 (1933); *Drew v. Thaw*, 235 U.S. 432, 440 (1914); *People ex rel. McNichols v. Pease*, 207 U.S. 100, 108-112 (1907); *Munsey v. Clough*, 196 U.S. 364, 372-75 (1905); *Hyatt v. Corkran*, 188 U.S. 691, 709-710 (1903); *Roberts v. Reilly*, 116 U.S. 80, 95-97 (1885); *Ex parte Reggel*, 114 U.S. 642, 651-52 (1885).

Because "[f]ugitivity means presence in the demanding state when the crime was allegedly committed," *Moncrief v. Anderson*, 342 F.2d 902, 904 (D.C. Cir. 1964), the right to challenge fugitivity includes the right to present evidence that one was not present in the demanding state at the time the

alleged crime was committed. *See, e.g.*, *Bailey*, 289 U.S. at 420-22; *McNichols*, 207 U.S. at 109-12; *Munsey*, 196 U.S. at 374-75; *Hyatt*, 188 U.S. at 709-11; *Roberts*, 116 U.S. at 97; *Reggel*, 114 U.S. at 651-52. As the *Munsey* Court explained: "When it is conceded, or when it is so conclusively proved that no question can be made, that the person was not within the demanding state when the crime is said to have been committed ... then the court [in the asylum state] will discharge the defendant." 196 U.S. at 374.

The Nevada Supreme Court, however, refused to apply that rule, upholding the trial court's refusal to consider petitioner's evidence that he was outside the United States at the time of alleged crimes in Arizona—the very evidence that had convinced the Florida court that petitioner was not a "fugitive" subject to extradition. The Nevada Supreme Court held that this evidence did not relate to whether petitioner was a fugitive, and thus "should be raised before the courts in Arizona." *Castriotta*, 888 P.2d at 928-29 & nn. 1, 2. Respondent defends that theory in this Court, arguing that evidence negating petitioner's presence in Arizona at the time of the alleged crimes goes only to "his ultimate innocence" and is thus "irrelevant" to the issue of fugitivity. Opp. Br. at 13.

That approach conflicts not only with the controlling federal precedents cited above, but also with the majority view among the state high courts that—notwithstanding the summary nature of extradition proceedings—a person facing extradition has a federal constitutional right to present evidence that he was not in the demanding state at time of the alleged crime. *See, e.g.*, *State ex rel. Coryell v. Gooden*, 457 S.E.2d 138, 144 (W. Va. 1995); *In re Ropp*, 541 A.2d 86, 88 (Vt. 1988); *In re Rowe*, 423 N.E.2d 167, 170-71 (Ohio 1981); *King v. Davis*, 580 P.2d 1318, 1320 (Kan. 1978); *Walton v. State*, 566 P.2d 766, 767-68 (Idaho 1977); *Baker v. Laurie*, 375 A.2d 405, 407 n.1 (R.I. 1977); *In re Russell*, 524 P.2d 1295, 1298 (Cal. 1974); *Ross v. Hegstrom*, 254 A.2d 556, 560-61 (Conn. 1969).

Nevada is not alone, however, in holding that evidence relating to a person's presence in demanding state at the time of an alleged crime is inadmissible in an extradition proceeding. Texas and Georgia have long applied the same rule. *See, e.g., Yost v. State*, 861 S.W.2d 73, 75 (Tex.App. 1993); *Ex parte Geringer*, 778 S.W.2d 132, 134 (Tex. App. 1989); *Hooten v. State*, 264 S.E.2d 192, 193 (Ga.), *cert. denied*, 446 U.S. 942 (1980); *Larsen v. State*, 262 S.E.2d 97, 97 (Ga. 1979).

Moreover, the split in authority involves more than whether such evidence must be allowed in the first instance. Even those state courts that have acknowledged a federal constitutional right to present such evidence are divided over the *burden of proof* necessary to overcome the presumption of regularity attaching to a sister State's extradition request. Some courts have held that, in order to defeat extradition, a person must prove "beyond a reasonable doubt" that he was not in the demanding State at the time of the alleged crime. *See, e.g., Barrila v. Blake*, 461 A.2d 1375, 1378-79 (Conn. 1983); *In re Rowe*, 423 N.E.2d 167, 173-74 (Ohio 1981); *In re Hart*, 583 P.2d 411, 419-20 (Mont. 1978). Other courts, in contrast, have imposed the lesser burden of presenting "clear and convincing" evidence. *See, e.g., State ex rel. Coryell v. Gooden*, 457 S.E.2d 138, 144 (W. Va. 1995); *State v. Miller*, 480 N.W.2d 894, 896 (Iowa 1992) ("clear and satisfactory"); *Galloway v. Josey*, 507 So.2d 590, 593-94 (Fla. 1987); *Langley v. Hayward*, 656 P.2d 1020, 1022 (Utah 1982); *Walker v. State*, 315 A.2d 855, 856 (Me. 1974).

This division of opinion is hardly surprising, as this Court's pronouncements on the subject have been less than entirely consistent. This Court has variously described the burden of proof necessary to preclude extradition on grounds of fugitivity as "conclusiv[e]," *Munsey v. Clough*, 196 U.S. 364, 374 (1905); "clea[r] and satisfactor[y]," *McNichols v. Pease*, 207 U.S. 100, 112 (1907); and "beyond [a] reasonable doubt," *South Carolina v. Bailey*, 289 U.S. 412, 422 (1933).

This Court should resolve the uncertainty by granting *certiorari*, reaffirming the right to present evidence negating presence in the demanding State at the time of the alleged crimes, and clarifying the relevant burden of proof.

III. THE FACTS OF THIS CASE REPRESENT A MISCARRIAGE OF JUSTICE.

Finally, although outrageous facts do not alone justify a writ of *certiorari*, they can signal that something is awry in the system and that this Court's intervention is needed. We believe that is the case here:

a. Petitioner was tried and convicted of a felony in Arizona *in absentia*, even though his court-appointed attorney never notified Castriotta of the trial date, which had been continued. (Reply Br. App. 3a-4a; 6a-8a). And nowhere in the record does it appear that petitioner was even identified, by photograph or otherwise, at the trial *in absentia* – i.e., there was no determination, even *in absentia*, that petitioner was in Arizona at the time of the offense for which he was tried.

b. Although petitioner's conviction *in absentia* is very likely unconstitutional, *cf. Crosby v. United States*, 113 S. Ct. 748, 750-53 (1993), the Arizona prosecutor has essentially admitted that he fully intends to use the other counts charged against petitioner as leverage to dissuade him from challenging the trial *in absentia*.[2]

c. Furthermore, once the Florida court determined that petitioner was not a fugitive from justice in Arizona and thus could not be extradited, (Reply Br. App. 1a-2a), Arizona

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[2] The Arizona prosecutor told the trial judge that "[b]asically, what I would hope to be able to do when we finally apprehend him and get him sentenced, is to be able to dismiss these cases *once that I'm sure there is not going to be a problem with the appeal and so forth*, so I think that would be subject to *negotiation with counsel and the defendant*, so right now, I would just, you know, vacate any trial dates that we might have because I don't want to try him in absentia any more until we get him here." (Reply Br. App. 10a).

chose not to appeal. Rather, it simply left the outstanding arrest warrants against petitioner in the National Crime Information Center computer to try its hand at successive extradition attempts.

d. Sure enough, petitioner was soon rearrested on those warrants in Florida. Again, the Arizona Governor sought petitioner's extradition from Florida, based on the misrepresentation in the Arizona prosecutor's application for a Governor's requisition order that "*no further or other application has been made for a requisition of this fugitive growing out of the transaction from which the charge herein originated.*" (Reply Br. App. 13a).

e. Once again, however, the Florida Circuit Court refused to extradite petitioner, holding instead that its prior order granting the writ of habeas corpus "remains in full force and effect." (Reply Br. App. 15a-16a). Once again, Arizona did not appeal.

f. Instead, yet again, Arizona chose to try its luck at further successive attempts to extradite petition. This time, Arizona caused petitioner to be arrested in Nevada. Again, the Arizona prosecutor misrepresented to the Arizona Governor and the Nevada Governor and courts that no prior application for extradition had been made for petitioner growing out of the same underlying events. (Reply Br. App. 17a-18a). Once again, the Arizona Governor demanded extradition.

In our view, Arizona plainly is not playing by the rules. Just as a habeas petitioner may not abuse the writ with successive petitions, a State should not be allowed to abuse the extradition process by pursuing successive extradition requests in one State after another. We respectfully suggest that the Court should review this case to discourage this sort of prosecutorial overreaching.

CONCLUSION

The Court should either summarily reverse the decision below or grant the petition for *certiorari*.

Respectfully submitted,

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Paul David Fini Castriotta

Dated: August 30, 1994

REPLY BRIEF APPENDIX

**IN THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND
FOR PINELLAS COUNTY, FLORIDA
CASE No. CRC 93-000702-C1**

**PAUL DAVID CASTRIOTTA,
a/k/a ROBLEY ROBINSON,**

Petitioner,

v.

**EVERRETT S. RICE, as Sheriff
of Pinellas County, Florida**

Respondent.
_____/

**ORDER
ON PETITIONERS MOTION FOR REHEARING**

THIS CAUSE coming on to be heard upon Petitioner's Motion for Rehearing, and the Court having heard argument of Counsel for Petitioner and Counsel for the State of Florida, and the Court finding that it had previously entered an Order and an Amended Order denying the Petition For Writ of Habeas Corpus, hereby:

ORDERS that the Motion for Rehearing be and the same is, GRANTED, and the Court further finds upon rehearing, as follows:

1. That the requisitioning documents in CRC 99-57653 CFANO-J are not on their face in order, and further;

2. That Petitioner is not a fugitive from justice. It is therefore:

ORDERED that Petitioner PAUL DAVID CASTRIOTTA a/k/a ROBLEY ROBINSON's Petition For Writ of Habeas Corpus, be and the same is, GRANTED, and it is further:

ORDERED that PAUL DAVID CASTRIOTTA, a/k/a ROBLEY ROBINSON, be released from the Pinellas County Jail on Arizona extradition Case No. CRC 99-57653 CFANO-J instanter.

DONE AND ORDERED, in Chambers, at Clearwater, Pinellas County, Florida, this 5th day of April, 1993.

/s/
Circuit Judge

Copy to:
Larry C. Hoffman, Esq.
State of Florida

AFFIDAVIT

STATE OF ARIZONA)
) **ss.**
County of Pima)

I, TIM ARMBRUSTER, being first duly sworn upon oath depose and say:

1. That I was Paul Castriotta's attorney in Pima County Superior Court Case No. CR-18937.

2. That the trial in CR-18937 was originally scheduled for January 8, 1987.

3. That on January 7, 1987, a hearing was held on a Motion to Continue the trial date. Paul Castriotta was not present at that hearing. The court continued the trial to January 15, 1987.

4. That I had no contact with Paul Castriotta between the January 7, 1987 hearing and the new trial date.

5. That I objected to the trial of January 15, 1987 being conducted in Paul Castriotta's absence.

6. That the trial was held without the presence of Paul Castriotta.

DATED this 18th day of November, 1992.

/s/
TIM ARMBRUSTER

SUBSCRIBED AND SWORN to before me a Notary Public, this 18th day of November, 1992, by TIM ARMBRUSTER.

/s/
Veronica I. Merriman
Notary Public

My Commission Expires:
May 16, 1994

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF PIMA

No. CR-18937

The State of Arizona,
Plaintiff,
v.
Paul Castriotta,
Defendant.

Thursday, January 15, 1987
Tucson, Arizona

Reporter's Official Transcript
Excerpt From Proceedings Re Trial In Absentia

Before: The Honorable Philip Farringer, Judge

Appearances:

For The State:
Millard M. Rowlette, Esq.,
Deputy County Attorney

For The Defendant:
Timothy Lee Armbruster, Esq.,
Assistant Public Defender

Van G. Honeman, RPR, CM
Official Court Reporter, Div. #8
Pima County Superior Court
Tucson, Arizona

AFTERNOON SESSION, JANUARY 15, 1987

THE COURT: Good afternoon.

This is the time or the day set for trial of State vs. Paul David Castriotta, also known as Daniel Samson, and John Wayde Jay, a couple of also known as's.

The trial is only as to Castriotta since the defendant Jay has pled; is that correct?

MR. ROWLETTE: Correct, your Honor.

THE COURT: And my recollection is that the one count that is set for trial at this time is Count Four, the fraudulent scheme and artifice count; is that correct?

MR. ROWLETTE: Yes, it is, your Honor.

MR. ARMBRUSTER: Yes, sir.

THE COURT: Mr. Armbruster, I note the absence of your client from the courtroom. Is there anything you want to say in that regard?

MR. ARMBRUSTER: Your Honor, at this time, I wouldn't be prepared to go forward. My client is not present and I do not have his permission to proceed in his absence.

THE COURT: I believe that he was personally advised, was he not, of this trial date?

MR. ARMBRUSTER: Your Honor. I think—my recollection is that it was originally scheduled for last Thursday, and we came in and asked for a continuance from the Court at that time, and he was not present at the time that the case was rescheduled for the date today.

THE COURT: How was it—oh, it was both you and Mr. Rowlette that came in and requested a motion—both you and Mr. Rowlette requested a continuance; is that correct?

MR. ARMBRUSTER: That's correct, your Honor.

THE COURT: There was talk about the out of state witnesses and we had the hearing at some point on the relevance of certain testimony.

MR. ARMBRUSTER: Correct.

THE COURT: And Mr. Castriotta was not present on that occasion?

MR. ARMBRUSTER: No, he was not, your Honor.

THE COURT: Was that the date originally set for trial?

MR. ARMBRUSTER: The 8th was the date originally set for trial.

THE COURT: And—the 8th. That was last Thursday.

MR. ARMBRUSTER: Correct.

THE COURT: And was that the date that we had the hearing?

MR. ARMBRUSTER: That was—no. The day we had the hearing was the 9th. It was on Friday.

THE COURT: Was it the 8th on which you made the motion to continue?

MR. ARMBRUSTER: I believe the motion to continue was heard on Wednesday the 7th.

THE COURT: Have you heard from Mr. Castriotta, Mr. Armbruster?

MR. ARMBRUSTER: I have been in contact with him through the first part of this week.

THE COURT: Is there any reason to think that he doesn't know that we're proceeding at this time on this day?

MR. ARMBRUSTER: That's a kind of difficult question, your Honor.

THE COURT: Well, I guess what I'm—what's going through my mind is I imagine the defendant was personally

advised of the trial date of last Thursday, the 8th. Is that when it was set?

MR. ARMBRUSTER: Yes, your Honor, he had knowledge of that date.

THE COURT: And then he didn't appear on that date at the time we heard the motion to continue?

MR. ARMBRUSTER: Well, I think the motion to continue was actually heard on Friday the 9th, and—excuse me—the motion was heard on the 7th. He was not present at the time the motion to continue was heard.

THE COURT: See, you know, and now the next time that there is a motion to continue and there is some reluctance on the Court to grant it, you know why, among other reasons.

Mr. Rowlette, do you have anything you want to say?

MR. ROWLETTE: Yeah, your Honor.

I think what's happened here is that Mr. Armbruster is a little bit concerned about what he may believe to be some confidential communications between himself and his client. As he indicated to the Court, he has had contact with his client this week, and I think it's at least implicit that Mr. Armbruster is telling us that Mr. Castriotta knows that the trial is set for today, because this is the date actually set for trial, according to the Court's minute entry, and, you know, I think the case law is also in the state where even if you can't show that on the record the defendant was advised of the specific trial date, the defendant does have the responsibility under the law of maintaining contact with his attorney and knowing what the trial date is.

THE COURT: Yeah, I think you're right, and in light of the fact the defendant did have personal knowledge and was personally advised of the January 8 trial date and didn't appear on that date, and, apparently, no one has heard from him and there is no evidence of any valid reason for his absence, the Court finds that the defendant's absence is knowing and

intentional and voluntary and wilful and that he waives his right to be present at the trial.

Do you want to proceed in absentia, Mr. Rowlette?

MR. ROWLETTE: I'm willing to proceed in absentia, your Honor. I would prefer to have him here, but I am willing to proceed in absentia.

THE COURT: Let's proceed in absentia, then.

When we pick the jury, why don't we pick the jury the way we used to do it over in Federal Court, and that's exercise the strikes while we are all sitting here, instead of having the jury go out and wander around and take extra time. Any problem with that? We're going to be doing it at 5:00, you know.

MR. ROWLETTE: Yeah, I know, but, I mean, I think it's not going to make it that much faster, your Honor.

THE COURT: It sure does. You do it in five minutes instead of twenty-five, and I'll tell you that in thousands of cases tried in Tucson without any miscarriage of justice because the attorneys just sit there, and we can do it, believe me, it can be done. I have done it many times myself. Is there any big deal about that?

MR. ARMBRUSTER: I have no problem.

MR. ROWLETTE: I would prefer not to do that. Let's just take a fifteen minute break.

THE COURT: Let's do that. Let's exercise the strikes while they are here, and let's call the jury and get going.

DURING AFTERNOON SESSION JANUARY 16, 1987

(Proceedings had following trial re prior convictions and while waiting for jury verdict:)

MR. ARMBRUSTER: Your Honor, what are we going to do with the rest of Mr. Castriotta's cases?

THE COURT: This would be a Class 2 felony with two priors?

MR. ROWLETTE: Yeah.

THE COURT: I guess the issue—well, what do you plan to do about it?

MR. ROWLETTE: Basically, what I would hope to be able to do is when we finally apprehend him and get him sentenced, is to be able to dismiss these cases once that I'm sure there is not going to be a problem with the appeal and so forth, so I think that would be subject to negotiation with counsel and the defendant, so right now, I would just, you know, vacate any trial dates that we might have because I don't want to try him in absentia any more until we get him here.

THE COURT: What do you say to that, Mr. Armbruster?

MR. ARMBRUSTER: That's fine with me.

THE COURT: Is it all one case number?

MR. ROWLETTE: No. There is two case numbers, your Honor.

THE COURT: One of them is in this case?

MR. ROWLETTE: Yes.

THE CLERK: And the other is 19973.

THE COURT: And you have no objection, Mr. Armbruster, to vacating the trial dates?

MR. ARMBRUSTER: No, your Honor.

THE COURT: On motion of the State and good cause appearing because of the defendant's absconder status, and the State—or the defendant's non-appearance, and in light of the State's desire not to attempt to try the cases in absentia, it is ordered that the currently set trial dates in CR-18937 and 19973 are vacated, to be reset upon the defendant's apprehension.

DURING MORNING SESSION JANUARY 20, 1987

(The trial re prior convictions was continued to this date, and before taking the verdict in the trial re prior convictions, the following proceedings were had:)

MR. ROWLETTE: Your Honor, can we go on the record in the Castriotta case in just a second?

THE COURT: Yes.

MR. ROWLETTE: I asked Alan Davidon about the procedure as far as the bond forfeiture and he said the procedure, if you are willing to follow it, is for you to refer the matter to Commissioner Kipps.

THE COURT: I would be delighted to follow that procedure.

MR. ROWLETTE: Thank you.

THE COURT: It is ordered that the matter of bond forfeiture be referred to Commissioner Kipps for appropriate proceedings.

(The verdicts re prior convictions were taken.)

THE COURT: Is there anything else in the Castriotta case?

MR. ROWLETTE: No.

THE COURT: We have issued a bench warrant and so forth.

It is ordered that sentencing be set at such time as the defendant is apprehended.

MR. ROWLETTE: Thank you, your Honor.

CERTIFICATE

I, Van G. Honeman, do hereby certify that I took the machine shorthand notes in the foregoing matter; that the same was transcribed via computer-aided transcription; that the

preceding pages of typewritten matter are a true, correct and complete transcription of those proceedings ordered, to the best of my skill and ability.

/s/_____

Van G. Honeman RPR, CM
Official Court Reporter
Pima County Superior Court
Tucson, Arizona 87501

(The court reporter scanned the stenographic notes of the Motion to Continue Trial held Wednesday, January 7, 1987, and the Hearing on Motion to Suppress held Friday, January 9, 1987, and no mention was made at either hearing concerning advising the defendant of new trial date or trial would otherwise be held in absentia.)

OFFICE OF THE COUNTY ATTORNEY
COUNTY OF PIMA, STATE OF ARIZONA

TO HER EXCELLENCY
THE GOVERNOR OF ARIZONA

In compliance with your rules of practice respecting application for requisition for the extradition of fugitives from justice, I have the honor herewith to make application for a requisition upon the Governor of the State of Florida for the extradition of PAUL DAVID CASTRIOTTA, who is charged with the commission of a felony, to-wit: Fraudulent Scheme and Artifice, and who is a fugitive from justice of the State of Arizona, and who is now in Largo, Florida, and in furtherance of this application.

I HEREBY CERTIFY

First: That the full name of the person from whom extradition is asked is PAUL DAVID CASTRIOTTA and the name of the person who I hereby propose for designation as agent of the state herein is Clarence W. Dupnik, Sheriff of Pima County, or one of his designated agents.

Second: That, in my opinion, the ends of public justice require that the alleged criminal, whose extradition is hereby requested, be brought to this state for hearing on allegation violation of the crime listed above.

Third: That I have, as I believe, sufficient evidence to secure a conviction of said fugitive.

Fourth: That no further or other application has been made for a requisition of this fugitive growing out of the transaction from which the charge herein originated.

Fifth: That this application is not made for any private reason whatever, and that, if the requisition applied for be granted, the criminal proceedings shall not be used for and.

Sixth: That the fugitive is charged with the commission of a felony under Arizona Revised Statutes, Sections 13-2310, 13-701, 13-702, 13-801, 13-803, 13-808 and 13-604(B) and (D), which provide as follows:

SEE ATTACHED COPIES OF STATUTES

that by reason of the foregoing facts and the provisions of the laws of the State of Arizona hereinabove set out, the crime listed is a felony and, therefore, extraditable.

Seventh: That the offenses charged were committed on or about the 11th day of July, 1986, through the 20th day of July, 1986, the 15th day of July through the 16th day of July, 1986 and the 18th day of July, 1986 through the 4th day of August, 1986, in Tucson, Pima County, Arizona.

Eighth: That this application is made by Lori Winans, whose affidavit accompanies this application and I recommend that such requisition be granted.

Ninth: That several sets of papers in triplicate herein have been compared with each other and are in all respects exact counterparts.

/s/

RICK UNKLESBAY

Deputy County Attorney

County of Pima, Arizona

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT OF THE STATE
OF FLORIDA, IN AND FOR PINELLAS COUNTY
CRIMINAL JUSTICE DIVISION

No. CRC 92-16027 CFANO-I,
93-0702-CI,
99-57653, 99-60551,
99-60555,

State of Florida,
v.
Paul David Castriotta,
also known as
Robley Robinson,
Defendant.

ORDER

THIS COURT having read counsel's submissions and heard counsel's arguments;

It is hereby ORDERED AND ADJUDGED:

1. That the Defendant's motion for reinstatement of bond as to case number 92-16027 is denied without prejudice to file and argue this motion in front of the Honorable Claire K. Luten.

2. As to case number 99-57653 the Defendant is released instanter. Any bond previously set in this matter is withdrawn. Any hold placed on the Defendant for this case shall be removed from the criminal information system.

3. As to case number 93-0702 this court has already ruled on this case and no other action is ordered. The court's previous ruling as to case number 93-0702 remains in full force and effect.

4. As to case number 99-60555, the Defendant is released instanter. Any bond set previously on this case is withdrawn as the District Attorney in Dallas County, Texas has dismissed these charges.

5. As to case number 99-60551, the Defendant's bond is set at $10,000.00. The court's previous orders setting the bond on this case at $5,000.00 and revoking this bond and setting the bond at $50,000.00 are hereby withdrawn.

6. It is a condition of the bond in case number 99-60551 that the Defendant not leave the jurisdiction of this court.

7. This court declines to rule at this time on whether the Defendant's incarceration in Orange County, Florida amounted to a surrender. The Defendant may bring this issue up again at a later time.

DONE AND ORDERED in open court on the 30th day of November 1993 and signed in chambers on the 31st day of December 1993.

/s/
Honorable Brandt Downey
Circuit Court Judge

OFFICE OF THE COUNTY ATTORNEY
COUNTY OF PIMA, STATE OF ARIZONA

TO HER EXCELLENCY
THE GOVERNOR OF ARIZONA

In compliance with your rules of practice respecting application for requisition for the extradition of fugitives from justice, I have the honor herewith to make application for a requisition upon the Governor of the State of Nevada for the extradition of PAUL DAVID CASTRIOTTA, who is charged with the commission of felonies, to-wit: In CR-18937: FRAUDULENT SCHEME AND ARTIFICE (Count 4), and thereafter, said fugitive failed to appear as ordered and a Bench Warrant for his arrest was issued, and who is further charged with the commission of felonies, to wit: in CR-18937, THEFT OF A CREDIT CARD, THEFT BY CONTROL and BURGLARY IN THE SECOND DEGREE, and in CR-19973, FRAUDULENT SCHEME AND ARTIFICE, (two counts), and THEFT OF A CREDIT CARD, who is a fugitive from justice of the State of Arizona, and who is now in Las Vegas, Nevada, and in furtherance of this application.

I HEREBY CERTIFY

First: That the full name of the person from whom extradition is asked is PAUL DAVID CASTRIOTTA and the name of the person who I hereby propose for designation as agent of the state herein is Clarence W. Dupnik, Sheriff of Pima County, or one of his designated agents.

Second: That, in my opinion, the ends of public justice require that the alleged criminal, whose extradition is hereby requested, be brought to this state for hearing on allegation violation of the crime listed above.

Third: That I have, as I believe, sufficient evidence to secure a conviction of said fugitive.

Fourth: That no further or other application has been made for a requisition of this fugitive growing out of the transaction from which the charge herein originated.

Fifth: That this application is not made for any private reason whatever, and that, if the requisition applied for be granted, the criminal proceedings shall not be used for such end.

Sixth: That the fugitive is charged with the commission of felonies under Arizona Revised Statutes, Sections 13-2102(A)(1),(2) and (B), 13-1802(A)(1) and (C), 13-1507, 13-2310, 13-604(A),(B),(C),(D),(H), 13-701, 13-702, 13-801, 13-804, 13-803, 13-808, 13-812, which provide as follows:

SEE ATTACHED COPIES OF STATUTES

that by reason of the foregoing facts and the provisions of the laws of the State of Arizona hereinabove set out, the crimes listed are felonies, and, therefore, extraditable.

Seventh: That the offenses charged were committed on or about the 11th day of July, 1986 through the 4th day of August, 1986, in Tucson, Pima County, Arizona.

Eighth: That this application is made by Lori Winans, whose affidavit accompanies this application and I recommend that such requisition be granted.

Ninth: That several sets of papers in triplicate herein have been compared with each other and are in all respect exact counterparts.

/s/
RICK A. UNKLESBAY
Deputy County Attorney
County of Pima, Arizona